



# ARIZONA HOUSE OF REPRESENTATIVES

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## **HB 2101: electric energy; reliability; public policy**

**Sponsor: Representative Griffin, LD 14**

**Caucus & COW**

### **Overview**

Directs public power entities to adopt consumer protection measures, allows anyone to challenge a public power entity's rate decisions, authorizes electric cooperatives to collaborate with other entities in acquiring and disposing of electricity and repeals parts of a 1998 law that established a framework for electric generation service competition.

### **History**

In the early 1990s, the Arizona Corporation Commission (ACC) debated the Retail Electric Competition rules which changed the retail sale of electric generation and related services from a system of regulated monopolies to a competitive market. These rules required public service corporations (PSCs) that provided bundled generation, transmission and distribution services to allow electric service providers access to their transmission and distribution facilities. An electric service provider that wanted to offer competitive services would need the ACC's approval, which included being issued a certificate of convenience and necessity and having the maximum rate for a given service approved. To help customers compare rates, the affected public service corporations needed to file unbundled rates for various services with the ACC. The ACC formally issued electric competition rules in 1996 and revised them through 2001.

While the ACC debated these rules, the Legislature passed a framework for electric generation competition that coordinated the ACC's efforts with changes for public power entities (PPEs) (such as the City of Mesa and Salt River Project) and certain electric cooperatives. This law set a timeline for opening PPE and PSC service territories to competition for electric generation service. It also outlined a process for PPEs to recover stranded costs and included consumer protection measures such as a PPE code of conduct and an appeals process for certain PPE decisions involving competitive business practices ([Laws 1998, Chapter 209](#)).

However, a competitive market for electric generation services never materialized in Arizona. Several utilities and electric cooperatives successfully challenged some of the Retail Electric Competition rules and electric service provider applications the ACC had already approved in *Phelps Dodge Corporation v. Arizona Electric Cooperative* (207 Ariz. 95 (Ariz. Ct. App. 2004)). This decision combined with other factors to make the marketplace less conducive to competitive electric service providers.

### **Provisions**

#### ***Consumer Protection Measures for Public Power Entities***

1. Mandates PPEs to establish an ombudsman and outlines the minimum requirements for rules and procedures they must adopt to protect against unfair practices. (Sec. 7)
2. Requires contractors employed by a PPE for interior household service to be licensed and comply with applicable municipal permits, inspection standards and life safety codes. (Sec. 7)

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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3. Directs PPEs to make information demonstrating compliance with the ombudsman, fair business practices and contractor requirements available on request. (Sec. 7)
4. Instructs a PPE to adopt rules and procedures for ensuring customer confidentiality and prohibits it from releasing customer-specific information without written authorization unless doing so is required for account collection, credit analysis, providing safe and reliable service or required by a court order. (Sec. 7)
5. Limits records and proceedings involving competitive activity that would provide an advantage to another entity from being open to public inspection and stipulates that only a PPE governing body can make this information available. (Sec. 7)
6. Defines *electricity*, *electric service*, *public power entity*, *retail electric customer*, *service territory* and *contractor*. (Sec. 7)
7. Contains a policy declaration. (Sec. 7)

***Appeal Process for A Public Power Entity Governing Board's Decision or Order***

8. Allows anyone to apply for a rehearing of a PPE governing body's final order or decision involving ratemaking or rate design. (Sec. 10)
9. Clarifies that a claim involving a ratemaking or rate design order or decision does not accrue in any court to any party or the state unless the party or the state applies to the governing body for rehearing before the order or decision's effective date. (Sec. 10)
10. Allows anyone who disagrees with a ratemaking or rate design order or decision to pursue action in either the superior court or the court of appeals within 30 days of when a request for rehearing was denied. (Sec. 11, 12)
11. Requires the superior court or court of appeal's judgment to either vacate, set aside, affirm in whole or in part, reverse in part, or remand with instructions when the order or decision is not supported by substantial evidence or the court finds the governing body has abused its discretion. (Sec. 11, 12)

***Electric Cooperatives***

12. Authorizes electric cooperatives to collaborate with other entities, instead of just corporations with Rural Utilities Service loans or nonprofit members of such corporations, when generating, acquiring, purchasing, marketing, selling, supplying, transmitting, distributing or disposing of electric energy. (Sec. 2, 4)

***Repealing Electric Generation Competition Statutes***

13. Repeals the following sections of statute:
  - a) A.R.S. § 9-520, which prohibits a municipality that distributes electricity from selling electric generation services outside its service territory unless it allows other electricity suppliers to sell similar services within its service territory; (Sec. 1)
  - b) A.R.S. § 30-801, which contains the definitions for the electric generation competition statutes; (Sec. 6)
  - c) A.R.S. § 30-802, which directs PPEs to determine the terms and conditions for competition in retail sale of electric generation service; (Sec. 6)
  - d) A.R.S. § 30-803, which directs PPEs to open their service territories to competition while maintaining these service territories for electric distribution; (Sec. 6)
  - e) A.R.S. § 30-805, which outlines how PPEs should establish nondiscriminatory and reasonable distribution prices and terms; (Sec. 6)
  - f) A.R.S. § 30-806, which directs PPEs, in coordination with the ACC, to adopt rules and procedures to protect against unfair business practices; (Sec. 8)

- g) A.R.S. § 30-807, which requires PPEs to provide a comprehensive public education program on electric generation service competition; (Sec. 8)
  - h) A.R.S. § 30-808, which prohibits public inspection of records and proceedings involving competitive activity if doing so would provide a material advantage to competitors unless this information is made public by the PPE governing body; (Sec. 8)
  - i) A.R.S. § 30-813, which declares that the Uniform State Antitrust Act applies to a PPE's competitive electric generation service and other services; (Sec. 13)
  - j) A.R.S. § 40-113, which outlines the ACC's authority to administer a public education program on electric generation service competition; (Sec. 13)
  - k) A.R.S. § 40-207, which requires an electricity supplier to obtain a certificate from the ACC before selling electricity to retail customers; and (Sec. 16)
  - l) A.R.S. § 40-208, which requires service territories established by certificates of convenience and necessity to be open to electric generation service competition by 2001 for any PPE or any electricity supplier with a certificate from ACC. (Sec. 16)
14. Deletes the definitions of *ancillary services*, *bundled service*, *foreign nonprofit*, *member owned cooperative corporation*, *gas plant*, *other services* and *water system* in the PSC statutes. (Sec. 14).
  15. Deletes provisions confirming the ACC's authority to take regulatory steps to transition to competition for electric generation services and other related services. (Sec. 15)
  16. Deletes provisions confirming the ACC's authority to adopt rules to:
    - a) Prohibit PSCs that form affiliates to provide services requiring licensed contractors from advertising these services in the electric distribution utility's materials;
    - b) Provide separate authorizations to change electricity suppliers; and
    - c) Allow aggregation of loads by multiple customers. (Sec. 15)
  17. Deletes a policy declaration. (Sec. 15)
  18. Removes the mandate that the ACC order PSCs to open their distribution territories to competition by PPEs on a nondiscriminatory basis. (Sec. 15)
  19. Deletes provisions allowing the ACC to exempt or partially exempt a PSC's competitive service from certain regulatory requirements. (Sec. 15)

### **Miscellaneous**

20. Renumbers A.R.S. §§ 30-809, 30-810 and 30-811. (Sec. 9, 10)
21. Renames the heading for Title 30, Chapter 6 from "electric power competition" to "electric energy reliability." (Sec. 5)
22. Makes technical and conforming changes. (Sec. 1-4, 10-12, 14-15)

### **Amendments**

Committee on Natural Resources, Energy & Water

1. Clarifies that a PPE does not include a municipality with less than 75,000 people.
2. Establishes alternate criteria for a PPE that is a city or town to comply with the ombudsman requirement.
3. Directs a PPE that is a Title 48, Chapter 17 agricultural improvement district to offer a buy-through program by 2024 that meets certain requirements.
4. Requires PPEs to participate and support independent system operators, independent system administrators or other state and regional coordination efforts.
5. Repeals the legislative intent clause of the 1998 electric generation service competition law.

6. Deletes the public policy statements.